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the Agassi Campus, Democracy Prep Nevada LLC, School
26 Board of Democracy Prep at the Agassi Campus, Natasha
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28 PhD, and Kimberly Wall*

18 **UNITED STATES DISTRICT COURT**

19 **DISTRICT OF NEVADA**

20
21 GABRIELLE CLARK, individually and as parent
22 and guardian of WILLIAM CLARK, and
23 WILLIAM CLARK, individually,

24 Plaintiffs,

25 vs.

26 STATE PUBLIC CHARTER SCHOOL
27 AUTHORITY, DEMOCRACY PREP PUBLIC
28 SCHOOLS, DEMOCRACY PREP PUBLIC
SCHOOLS, INC., DEMOCRACY PREP at the
AGASSI CAMPUS, DEMOCRACY PREP
NEVADA LLC, SCHOOL BOARD of Democracy
Prep at the Agassi Campus, NATASHA TRIVERS,

CASE NO.: 2:20-cv-02324-APG-VCF

**NOTICE OF INTERVENING
DEVELOPMENT REGARDING
PRELIMINARY INJUNCTION HEARING
AND REQUEST FOR HEARING**

1 individually and in her official capacity as
 2 Superintendent and CEO, ADAM JOHNSON,
 3 individually and in his official capacity as Executive
 4 Director and Principal, KATHRYN BASS,
 5 individually and in her capacity as Teacher,
 JOSEPH MORGAN, individually and in his official
 capacity as Board Chair, KIMBERLY WALL,
 individually and in her capacity as assistant
 superintendent, and John & Jane Does 1-20,

6 Defendants.

7
 8 Defendants Democracy Prep Public Schools, Democracy Prep Public Schools, Inc., Democracy
 9 Prep at the Agassi Campus, Democracy Prep Nevada LLC, School Board of Democracy Prep at the Agassi
 10 Campus, Natasha Trivers, Adam Johnson, Kathryn Bass, Joseph Morgan, PhD, and Kimberly Wall (the
 11 “Defendants”), by and through their counsel, GREENBERG TRAURIG, LLP, and WILMER CUTLER
 2 PICKERING HALE AND DORR LLP, hereby submit their Notice of Intervening Development
 3 Regarding Preliminary Injunction Hearing and Request for Hearing.

4 1. Plaintiffs William and Gabrielle Clark have moved for a preliminary injunction, seeking
 5 “an emergency preliminary order directing Defendants” to “expunge [William’s] failing first Trimester
 6 ‘Sociology of Change’ grade,” “accommodate William Clark by permitting him to enroll in another class
 7 or project,” require that “Principal Johnson … personally deliver to Plaintiffs the report card, corrected
 8 and scrubbed of stigma,” enjoin and restrain Defendants and their affiliates and agents from conducting
 9 “graded identity confession and labeling exercises,” and declare that such exercises are unlawful. [ECF
 20 No. 19 at 25] A hearing on Plaintiffs’ application is scheduled before this Court on April 14, 2021, at 9:00
 21 a.m. by videoconference. [ECF No. 71]

22 2. Defendants write to notify the Court that they have provided Plaintiff William Clark with
 23 the preliminary injunctive relief he seeks. Specifically, Defendants have expunged William Clark’s first
 24 and second trimester Sociology of Change grades and updated his transcript to reflect the same. *See*
 25 **Exhibit A** (Johnson Ltr.) [REDACTED]

26 [REDACTED]
 27 [REDACTED] Defendants have also excused William from
 28 completing the Sociology of Change course as a graduation requirement, such that he will remain on track

1 to graduate in May 2021 with the rest of his senior cohorts, so long as he otherwise remains in good
 2 academic standing and fulfills all other graduation requirements. *Id.* [REDACTED]
 3 [REDACTED]
 4 [REDACTED]

5 3. Although Defendants believe that Sociology of Change is an important and valuable part
 6 of the Democracy Prep curriculum, and maintain that Clark would benefit from the course, Defendants
 7 must balance its curricular interests against other important factors—namely the ability of Democracy
 8 Prep personnel to focus on the education of Democracy Prep’s 7400 other scholars. As a result,
 9 Defendants have decided to make this extraordinary accommodation to Clark so that their school personnel
 10 can remain focused on the school’s important educational mission.¹

11 4. Defendants respectfully submit that their actions obviate the need for the preliminary
 12 injunctive hearing scheduled for April 14, 2021, because Clark can no longer make the required showing
 13 of irreparable harm. As the Ninth Circuit has explained in similar circumstances, in evaluating a
 14 preliminary injunction the Court must “consider cessation of the alleged misconduct in determining
 15 whether the plaintiff has carried his burden of demonstrating a likelihood of irreparable harm.” *Lofton v.*
 16 *Verizon Wireless (VAW) LLC*, 586 Fed. Appx. 420, 421-22 (9th Cir. 2014) *SV3, LLC v. GG Distrib., Inc.*,
 17 2019 WL 1090772, at *3 (C.D. Cal. Feb. 6, 2019) (“The Ninth Circuit considers cessation of alleged
 18 misconduct to be a relevant factor in determining whether the plaintiff has carried its burden of
 19 demonstrating a likelihood of irreparable harm.”); *Cottonwood Envtl. L. Ctr. v. U.S. Sheep Experiment*
 20 *Station*, 2014 WL 12900653, at *1 (D. Mont. July 9, 2014) (“Defendants’ [accommodation] vitiates any
 21 argument as to irreparable and immediate harm, and along with it, any justification for a preliminary
 22 injunction.”).

23 5. As explained in Defendants’ opposition briefing, Plaintiffs cannot demonstrate preliminary
 24 relief is necessary because, among other things, there is no irreparable harm. *See supra ¶ 1*; ECF No. 44
 25 at 30-31. Though it was true at the time Defendants filed the opposition brief, there can be no colorable

26 1 Since the initial hearing on Plaintiffs’ application, Defendants have attempted in good faith to settle this matter,
 27 including through settlement conferences held before Magistrate Judge Koppe on March 3, 2021, March 8, 2021,
 28 March 12, 2021, and March 17, 2021. ECF Nos. 64, 69, 72, 76. The parties have been unable to settle, and Judge
 Koppe ordered that “[t]his case shall return to its normal litigation track.” ECF No. 76. To date, the parties have
 not reached settlement.

1 argument about irreparable harm given the concession outlined above. Clark sought injunctive relief
 2 primarily to “expunge his failing first Trimester ‘Sociology of Change’ grade,” receive accommodations
 3 that “permit him to enroll in another class or project” to fulfill his graduation requirements, and require
 4 that Principal Johnson personally deliver the corrected report card. ECF No. 19 at 25. Defendants have
 5 provided Clark with all three accommodations, *see* Ex. A, undercutting any purportedly imminent harm
 6 that justifies preliminary court intervention. Where, as here, the Defendant’s voluntary provision of the
 7 relief sought vitiates any showing of irreparable harm, the Court should deny the motion for a preliminary
 8 injunction. *Cottonwood Envtl. L. Ctr.*, 2014 WL 12900653, at *2 (vacating preliminary injunction hearing
 9 and denying motion for preliminary injunction without prejudice based on defendants’ accommodation);
 10 *see also Lofton*, 586 F. App’x 422 (affirming denial of preliminary injunction where defendant had revised
 11 its offending policy and practice, and thus plaintiff could no longer “carry his burden of demonstrating a
 2 likelihood of irreparable harm”).

3 6. None of Clark’s other requests requires a different result. His requests that the Court enjoin
 4 and restrain Defendants from conducting “graded identity confession and labeling exercises” and to further
 5 declare that such exercises are unlawful, ECF No. 19 at 25—are inappropriate for preliminary injunctive
 6 relief. First, there is no risk of Clark facing “confession and labeling exercises” in the future. Clark has
 7 been excused from the Sociology of Change coursework and requirements, the only class that he has ever
 18 claimed includes identity labeling assignments. Ex. A. Second, the declaratory judgment Plaintiffs request
 19 are not appropriate for a preliminary *injunction* hearing, which addresses only the injunctive relief
 20 necessary to avoid imminent and irreparable harm.

21 In light of the foregoing, Defendants respectfully submit that there are no factual issues remaining
 22 on the preliminary injunction that would require an evidentiary hearing. As such, Defendants respectfully
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request this Court take the currently-scheduled preliminary injunction hearing set for April 14, 2021 off calendar and deny Plaintiffs' motion for preliminary injunctive relief.

DATED this 9th day of April, 2021.

GREENBERG TRAURIG, LLP

/s/Kara B. Hendricks

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2021, a true and correct copy of the foregoing was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's EM/ECF system, and parties may access this filing through the Court's CM/ECF system.

/s/ *Andrea Flintz*

an employee of Greenberg Traurig, LLP

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